

CHAPTER 353

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

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353.01 DEFINITIONS.

[For text of subs 1 to 2a, see M.S.1990]

Subd. 2b. Excluded employees. The following persons are excluded from the meaning of "public employee":

(1) persons who are employed for professional services where the service is incidental to regular professional duties, determined on the basis that compensation for the service amounts to no more than 25 percent of the person's total annual gross earnings for all professional duties;

(2) election officers;

(3) independent contractors and their employees;

(4) patient and inmate personnel who perform services in charitable, penal, or correctional institutions of a governmental subdivision;

(5) members of boards and commissions who serve a governmental subdivision intermittently unless their position on the board or commission is the result of public employment within the same governmental unit;

(6) employees who are hired for a period of less than six consecutive months but not those employees who are hired for an unlimited period but are serving a probationary period. If the period of employment is extended beyond the six-month period and the employee earns more than \$425 from one governmental subdivision in any one calendar month, the department head shall report the employee for membership and require employee deductions be made on behalf of the employee under section 353.27, subdivision 4. Membership eligibility of an employee who holds concurrent temporary employment of six months or less and nontemporary positions in one governmental subdivision must be determined by the salary of each position. Membership eligibility of an employee who holds nontemporary positions in one governmental subdivision must be determined by the total salary of all positions;

(7) appointed and elected employees whose actual compensation from one governmental subdivision does not exceed \$425 per month, or whose annual compensation from one governmental subdivision is stipulated in advance, in writing, to be not more than \$5,100 per calendar year or per school year for school employees for employment expected to be of a full year's duration or more than the prorated portion of \$5,100 per employment period for employment expected to be of less than a full year's duration, except that members continue their membership until termination of public service as defined in subdivision 11a. Membership eligibility of an employee who holds concurrent part-time positions under this clause must be determined by the total salary of all such positions in one governmental subdivision. If compensation from one governmental subdivision to an employee under this paragraph exceeds \$5,100 per calendar year or school year after being stipulated in advance not to exceed that amount, the stipulation is no longer valid and contributions must be made on behalf of the employee in accordance with section 353.27, subdivision 12, from the month in which the employee's earnings first exceeded \$425;

(8) persons who first occupy an elected office after July 1, 1988, the compensation for which does not exceed \$425 per month;

(9) emergency employees who are employed by reason of work caused by fire, flood, storm, or similar disaster;

(10) employees who by virtue of their employment in one governmental subdivision are required by law to be a member of and to contribute to any of the plans or funds administered by the Minnesota state retirement system, the teachers retirement association, the Duluth teachers retirement fund association, the Minneapolis teachers retirement association, the St. Paul teachers retirement fund association, the Minneapolis employees retirement fund, or any police or firefighters relief association governed by section 69.77 that has not consolidated with the public employees police and fire fund, or any police or firefighters relief association that has consolidated with the public employees retirement association but whose members have not elected coverage by the public employees police and fire fund as provided in sections 353A.01 to 353A.10. This clause must not be construed to prevent a person from being a member of and contributing to the public employees retirement association and also belonging to and contributing to another public pension fund for other service occurring during the same period of time. A person who meets the definition of "public employee" in subdivision 2 by virtue of other service occurring during the same period of time shall become a member of the association unless contributions are made to another public retirement fund on the salary based on the other service or to the teachers retirement association by a teacher as defined in section 354.05, subdivision 2;

(11) police matrons who are employed in a police department of a city who are transferred to the jurisdiction of a joint city and county detention and corrections authority;

(12) persons who are excluded from coverage under the federal old age, survivors, disability, and health insurance program for the performance of service as specified in United States Code, title 42, section 410(a)(8)(A), as amended through January 1, 1987, if no irrevocable election of coverage has been made under section 3121(r) of the Internal Revenue Code of 1954, as amended;

(13) full-time students who are enrolled and are regularly attending classes at an accredited school, college, or university and who are not employed full time by a governmental subdivision;

(14) resident physicians, medical interns, and pharmacist residents and interns who are serving in a degree or residency program in public hospitals and students who are serving in an internship or residency program sponsored by an accredited educational institution;

(15) appointed or elected officers who are paid entirely on a fee basis and who were not members on June 30, 1971;

(16) persons who hold a part-time adult supplementary technical college license who render part-time teaching service in a technical college;

(17) persons exempt from licensure under section 125.031;

(18) persons employed by the Minneapolis community development agency;

(19) except as provided in section 353.86, volunteer ambulance service personnel, as defined in subdivision 35, but persons who serve as volunteer ambulance service personnel may still qualify as public employees under subdivision 2 and may be members of the public employees retirement association and participants in the public employees retirement fund or the public employees police and fire fund on the basis of compensation received from public employment service other than service as volunteer ambulance service personnel; and

(20) except as provided in section 353.87, volunteer firefighters, as defined in subdivision 36, engaging in activities undertaken as part of volunteer firefighter duties; provided that a person who is a volunteer firefighter may still qualify as a public employee under subdivision 2 and may be a member of the public employees retirement association and a participant in the public employees retirement fund or the public employees

police and fire fund on the basis of compensation received from public employment activities other than those as a volunteer firefighter.

[For text of subs 3 and 4, see M.S.1990]

Subd. 6. Governmental subdivision. "Governmental subdivision" means a county, city, town, school district within this state, or a department or unit of state government, or any public body whose revenues are derived from taxation, fees, assessments or from other sources, but does not mean any municipal housing and redevelopment authority organized under the provisions of sections 469.001 to 469.047; or any port authority organized under sections 469.048 to 469.068; or any hospital district organized or reorganized prior to July 1, 1975, under sections 447.31 to 447.37 or the successor of the district.

[For text of subs 7 and 8, see M.S.1990]

Subd. 10. Salary. (a) "Salary" means the periodical compensation of a public employee, before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs, and also means "wages" and includes net income from fees. Fees paid to district court reporters are not salary. Unused annual or sick leave payments, in lump-sum or periodic payments, are not salary. Severance payments, workers' compensation payments, and all payments in lieu of any employer-paid group insurance coverage, including the difference between single and family rates that may be paid to a member with single coverage, are not salary. Before the time that all sick leave has been used, amounts paid to an employee under a disability insurance policy or program where the employer paid the premiums are salary, and, after all sick leave has been used, the payment is not salary.

(b) Except as provided in sections 353.86 or 353.87, compensation of any kind paid to volunteer ambulance service personnel or volunteer firefighters, as defined in subdivisions 35 and 36, is not salary.

(c) For a public employee who has prior service covered by a local police or firefighters relief association that has consolidated with the public employees retirement association and who has elected coverage under the public employees police and fire fund benefit plan under section 353A.08 following the consolidation, "salary" means the rate of salary upon which member contributions to the special fund of the relief association were made prior to the effective date of the consolidation as specified by law and by bylaw provisions governing the relief association on the date of the initiation of the consolidation procedure and the actual periodical compensation of the public employee after the effective date of the consolidation.

[For text of subs 11 to 14, see M.S.1990]

Subd. 15. Dependent child. "Dependent child" means a natural or adopted child of a deceased member who is unmarried, and under the age of 18, or age 18 to 23, so long as the child submits evidence of full-time enrollment in an accredited educational institution. "Dependent child" also includes a child of the member conceived during the member's lifetime and born after the member's death. It also means a dependent child who is the subject of adoption proceedings filed by a member, and who within two years after death of the member, by judgment and decree duly entered, is adjudged to be the adopted child of the deceased member; subject, however, to the qualifying conditions of age and dependency under this subdivision. The dependency of the child dates from the decree of adoption. "Dependent child" also includes a child age 18 to 23 who had submitted evidence of full-time enrollment in an accredited educational institution but was determined to be medically unable to continue school on a full-time basis. The board of trustees shall adopt written procedures to make determinations regarding eligibility based on a student being medically unable to continue school, and may not continue a benefit for medical reasons for a period greater than one year.

Subd. 16. Allowable service. (a) "Allowable service" means service during years of actual membership in the course of which employee contributions were made, periods

covered by payments in lieu of salary deductions under section 353.35, and service in years during which the public employee was not a member but for which the member later elected, while a member, to obtain credit by making payments to the fund as permitted by any law then in effect.

(b) "Allowable service" also means a period of authorized leave of absence with pay from which deductions for employee contributions are made, deposited, and credited to the fund.

(c) "Allowable service" also means a period of authorized leave of absence without pay that does not exceed one year, and during or for which a member obtained credit by payments to the fund made in place of salary deductions, provided that the payments are made in an amount or amounts based on the member's average salary on which deductions were paid for the last six months of public service, or for that portion of the last six months while the member was in public service, to apply to the period in either case immediately preceding commencement of the leave of absence. If the employee elects to pay employee contributions for the period of any leave of absence without pay, or for any portion of the leave, the employee shall also, as a condition to the exercise of the election, pay to the fund an amount equivalent to both the required employer and additional employer contributions for the employee. The payment must be made within one year from the date the leave of absence terminates. The employer by appropriate action of its governing body, made a part of its official records, before the date of the first payment of the employee contribution, may certify to the association in writing that it will cause to be paid the employer and additional employer contributions from the proceeds of a tax levy made under section 353.28. Payments under this paragraph must include interest at the rate of six percent a year from the date of the termination of the leave of absence to the date payment is made.

(d) "Allowable service" also means a period during which a member is on an authorized sick leave of absence, without pay limited to one year, an authorized temporary layoff, or a maternity, paternity, or adoption leave. The association will grant a maximum of two months service credit for a maternity, paternity, or adoption leave upon documentation from the member's governmental subdivision. A member on personal leave of absence who provides the association with a birth certificate or other evidence of birth or adoption during the personal leave time period will be granted up to two months of service credit.

(e) "Allowable service" also means a period during which a member is on an authorized leave of absence to enter military service, provided that the member returns to public service upon discharge from military service under section 192.262 and pays into the fund employee contributions based upon the employee's salary at the date of return from military service. Payment must be made within five years of the date of discharge from the military service. The amount of these contributions must be in accord with the contribution rates and salary limitations, if any, in effect during the leave, plus interest at six percent a year compounded annually from the date of return to public service to the date payment is made. The matching employer contribution and additional employer contribution under section 353.27, subdivisions 3 and 3a, must be paid by the department employing the member upon return to public service if the member makes the employee contributions. The governmental subdivision involved may appropriate money for those payments. A member may not receive credit for a voluntary extension of military service at the instance of the member beyond the initial period of enlistment, induction, or call to active duty.

(f) For calculating benefits under sections 353.30, 353.31, 353.32, and 353.33 for state officers and employees displaced by the community corrections act, chapter 401, and transferred into county service under section 401.04, "allowable service" means combined years of allowable service as defined in paragraphs (a) to (e) and section 352.01, subdivision 11.

(g) For a public employee who has prior service covered by a local police or fire-fighters relief association that has consolidated with the public employees police and fire fund, and who has elected coverage by the public employees police and fire fund

benefit plan as provided in section 353A.08 following the consolidation, "applicable service" is a period of service credited by the local police or firefighters relief association as of the effective date of the consolidation based on law and on bylaw provisions governing the relief association on the date of the initiation of the consolidation procedure.

[For text of subs 17 to 19, see M.S.1990]

Subd. 20. Surviving spouse. "Surviving spouse" means the spouse of a deceased member who was legally married to the member at the time of death, or at the time the member became totally and permanently disabled.

[For text of subs 23 to 37, see M.S.1990]

History: 1991 c 269 art 2 s 5; 1991 c 341 s 1-6

353.03 BOARD OF TRUSTEES.

Subdivision 1. Management; composition; election. The management of the public employees retirement fund is vested in a board of trustees consisting of the state auditor and nine members. The governor shall appoint six trustees to four-year terms, one of whom shall be designated to represent school boards, one to represent cities, one to represent counties, one who is a member of the police and fire fund, one who is a retired annuitant, and one who is a public member knowledgeable in pension matters. The membership of the association shall elect three trustees for terms of four years. Trustees elected by the membership of the association must be public employees and members of the association. For seven days beginning October 1 of each year preceding a year in which an election is held, the association shall accept at its office filings in person or by mail of candidates for the board of trustees. A candidate shall submit at the time of filing a nominating petition signed by 25 or more members of the fund. No name may be withdrawn from nomination by the nominee after October 15. At the request of a candidate for an elected position on the board of trustees, the board shall mail a statement of up to 300 words prepared by the candidate to all persons eligible to vote in the election of the candidate. The board may adopt policies to govern form and length of these statements, timing of mailings, and deadlines for submitting materials to be mailed. These policies must be approved by the secretary of state. The secretary of state shall resolve disputes between the board and a candidate concerning application of these policies to a particular statement. A candidate who:

(1) receives contributions or makes expenditures in excess of \$100; or

(2) has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100 for the purpose of bringing about the candidate's election, shall file a report with the ethical practices board disclosing the source and amount of all contributions to the candidate's campaign. The ethical practices board shall prescribe forms governing these disclosures. Expenditures and contributions have the meaning defined in section 10A.01. These terms do not include the mailing made by the association board on behalf of the candidate. A candidate shall file a report within 30 days from the day that the results of the election are announced. The ethical practices board shall maintain these reports and make them available for public inspection in the same manner as the board maintains and makes available other reports filed with it. By January 10 of each year in which elections are to be held the board shall distribute by mail to the members ballots listing the candidates. No member may vote for more than one candidate for each board position to be filled. A ballot indicating a vote for more than one person for any position is void. No special marking may be used on the ballot to indicate incumbents. The last day for mailing ballots to the fund is January 31. Terms expire on January 31 of the fourth year, and positions are vacant until newly elected members are qualified. The ballot envelopes must be so designed and the ballots counted in a manner that ensures that each vote is secret.

The secretary of state shall supervise the elections. The board of trustees and the executive director shall undertake their activities consistent with chapter 356A.

[For text of subds 1a to 5, see M.S.1990]

History: 1991 c 341 s 7

353.27 PUBLIC EMPLOYEES RETIREMENT FUND.

[For text of subds 1 to 3a, see M.S.1990]

Subd. 4. Employers reporting requirements; contributions; member status. (a) The head of each department shall deduct employee contributions from the salary of each member and issue or approve one warrant for the aggregate amount of the employee contributions, the employer contributions and the additional employer contributions to be received within 20 calendar days in the office of the association. The head of each department shall, for each pay period in which employee contributions are deducted, submit to the association a salary deduction report, in the form prescribed by the executive director, showing (a) the legal names and the association membership numbers, listed in alphabetical order, of members; (b) the legal names of all new public employees and the effective dates of appointment; (c) the amount of each salary deduction; (d) the amount of salary from which each deduction was made; (e) effective dates of member terminations of public service accompanied by the applicable status code as set by the association for those terminations caused by death or retirement; (f) effective dates of all temporary layoffs and leaves of absence accompanied by the applicable status code as set by the association; and (g) the beginning and ending dates of the payroll period covered and the date of actual payment. Reports of contributions must be accompanied by a membership enrollment form for each new employee in the form prescribed by the executive director. The enrollment forms from new employees must be collected by the employer and submitted to the association within 30 days following the date of employment. The employer shall furnish such additional reports on magnetic media on other forms as may be requested by the executive director.

(b) Notwithstanding paragraph (a), the association may provide for less frequent reporting and payments for small employers.

Subd. 5a. Wrongful discharge settlement payments. Notwithstanding section 353.01, subdivision 10, employee deductions and employer contributions and additional employer contributions must be made on the gross salary of wrongful discharge settlement payments before subtracting unemployment compensation, workers' compensation, or wages from other sources.

Subd. 7. Adjustment for erroneous receipts or disbursements. (a) **Deductions taken in error.** Deductions taken in error by the employer from the salary of an employee for the retirement fund and transmitted to the association must be refunded to the employee under section 353.34, subdivision 2. The employer contribution and the additional employer contribution, if any, for the erroneous employee contribution must be refunded to the employer, provided that the refund of deductions taken in error has been made within three calendar years of the calendar year in which the initial deduction taken in error was received by the association. A refund of deductions taken in error from sick leave, vacation, workers' compensation, and severance pay may be made at any time. If the refund of deductions taken in error has not been made within three calendar years of the calendar year in which the initial deduction taken in error was received by the association, the erroneous contributions are considered valid, and the years of allowable service attributable to the deductions taken in error must be credited to the member under section 353.01, subdivision 16. Notwithstanding a law to the contrary, the employee may continue to be a member until termination of public service.

(b) **Erroneous disbursement.** In the event a salary warrant or check from which a deduction for the retirement fund was taken has been canceled or the amount of the warrant or check returned to the funds of the department making the payment, a refund of the sum deducted, or a portion of it that is required to adjust the deductions, must be made to the department or institution.

[For text of subd 7a, see M.S.1990]

Subd. 7b. Overpayments to members. In the event of an overpayment to a member, the executive director shall recover the overpayment by suspending or reducing the payment of a retirement annuity, refund, disability benefit, survivor benefit, or optional annuity under this chapter until all outstanding money has been recovered.

[For text of subds 8 to 11, see M.S.1990]

Subd. 12. Omitted salary deductions; obligations. (a) In the case of omission of required deductions from salary of an employee, the department head shall immediately, upon discovery, report the employee for membership and require employee deductions under subdivision 4. Omitted employee deductions due for the 60-day period preceding membership must be deducted upon receipt of billing from the association from the employee's next salary payment and remitted to the association. The employer shall pay any remaining omitted employee deductions and any omitted employer contributions, plus cumulative interest at the rate of six percent a year, compounded annually, from the date or dates each omitted employee contribution was first payable.

(b) An employer shall not hold an employee liable for omitted employee deductions beyond the pay period that covers the 60th day preceding membership nor attempt to recover from the employee those employee deductions paid by the employer. Omitted deductions not paid by the employee constitute a liability of the employer that failed to deduct the omitted deductions from the employee's salary. The employer shall make payment with interest at the rate of six percent compounded annually. Omitted employee deductions are no longer due if an employee terminates public service before making payment of omitted employee deductions to the association, but the employer remains liable to pay omitted employer contributions plus interest at the rate of six percent compounded annually from the date the contributions were first payable.

(c) The association may not commence action for the recovery of omitted employee deductions and employer contributions after the expiration of three calendar years after the calendar year in which the contributions and deductions were omitted. No payment may be made or accepted unless the association has already commenced action for recovery of omitted deductions. An action for recovery commences on the date of the mailing of any written correspondence from the association requesting information from the governmental subdivision upon which to determine whether or not omitted deductions occurred.

Subd. 12a. A terminated employee who has a period of employment in which previously omitted employer contributions were made under subdivision 12 but for whom no, or only partial, omitted employee contributions have been made, or a member who had prior coverage in the association for which previously omitted employer contributions were made under subdivision 12 but who terminated service before required omitted employee deductions could be withheld from salary, may pay the omitted employee deductions for the period on which omitted employer contributions were previously paid plus interest at the rate of six percent compounded annually. A terminated employee may pay the omitted employee deductions plus interest within six months of an initial notification from the association of eligibility to pay those omitted deductions. If a terminated employee is reemployed in a position covered under a public pension fund under section 356.30, subdivision 3, and elects to pay omitted employee deductions, payment must be made no later than six months after a subsequent termination of public service.

Subd. 12b. If deductions were omitted from salary adjustments or final salary of a terminated employee, the employer shall pay the employer and employer additional contributions plus interest on both and the employee shall pay the employee deductions.

[For text of subd 13, see M.S.1990]

History: 1991 c 341 s 8-14

353.28 FINANCING OF EMPLOYER CONTRIBUTIONS.

[For text of subds 1 and 5, see M.S.1990]

Subd. 6. If the governmental subdivision fails to pay amounts due under chapters 353, 353A, 353B, 353C, and 353D or fails to make payments of excess police state aid to the public employees police and fire fund under section 69.031, subdivision 5, the executive director shall certify those amounts to the governmental subdivision for payment. If the governmental subdivision fails to remit the sum so due in a timely fashion, the executive director shall certify amounts to the county auditor for collection. The county auditor shall collect such amounts out of the revenue of the governmental subdivision, or shall add them to the levy of the governmental subdivision and make payment directly to the association. This tax shall be levied, collected, and apportioned in the manner other taxes are levied, collected, and apportioned.

[For text of subd 8, see M.S.1990]

History: 1991 c 341 s 15

353.29 RETIREMENT ANNUITY UPON SEPARATION FROM PUBLIC SERVICE.

[For text of subds 1 to 3, see M.S.1990]

Subd. 4. **Application for annuity.** Application for a retirement annuity may be made by a member or by a person authorized to act on behalf of the member. Every application for retirement must be made in writing on a form prescribed by the executive director and must be substantiated by written proof of the member's age and identity. The notarized signature of a member's spouse on a retirement annuity application acknowledging the member's annuity selection meets the notice requirement to the spouse under section 356.371, subdivision 3. An application for a retirement annuity is not complete until all necessary supporting documents are received by the executive director.

[For text of subds 6 to 8, see M.S.1990]

History: 1991 c 341 s 16

353.31 SURVIVOR BENEFITS.

Subdivision 1. **Benefits for surviving spouse and dependent children; before retirement.** Upon the death of a basic member before retirement or upon the death of a basic member who was disabled and receiving disability benefits under section 353.33 at the time of death who has had at least 18 months of credited allowable service, the surviving spouse and dependent child or children of the member, as defined in section 353.01, subdivisions 15 and 20, are entitled to receive the monthly benefit provided below:

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|--------------------------|--|
| (a) Surviving spouse | 50 percent of the member's monthly average salary in effect over the last full six months of allowable service preceding the month in which death occurred |
| (b) Each dependent child | 10 percent of the member's monthly average salary in effect over the last full six months of allowable service preceding the month in which death occurred |

Subd. 1a. **Maximum family benefit.** Payments for the benefit of a dependent child or children, as defined in section 353.01, subdivision 15, must be made to the surviving parent, or to the legal guardian of the child. The maximum monthly benefit for a family

must not exceed an amount equal to 70 percent of the member's specified average monthly salary, and the minimum benefit for a family including a 100 percent joint and survivor annuity under subdivision 1b, must not be less than 50 percent of the basic member's specified average monthly salary.

Subd. 1b. Joint and survivor option. (a) Prior to payment of a surviving spouse benefit under subdivision 1, the surviving spouse may elect to receive the 100 percent joint and survivor optional annuity under section 353.32, subdivision 1a, rather than a surviving spouse benefit.

(b) If there is a dependent child or children, and the 100 percent joint and survivor optional annuity for the surviving spouse, when added to the dependent children's benefit under subdivisions 1 and 1a, exceeds an amount equal to 70 percent of the member's specified average monthly salary, the 100 percent joint and survivor annuity under section 353.32, subdivision 1a, must be reduced by the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount under subdivision 1a.

(c) The 100 percent joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement fund adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

Subd. 1c. Coordinated members. Except for benefits provided under section 353.32, subdivisions 1 and 1a, no survivor benefits are payable to the surviving spouse or dependent children of a deceased coordinated member.

[For text of subds 8 and 9, see M.S.1990]

History: 1991 c 269 art 2 s 6; 1991 c 341 s 17

353.32 REFUNDS AFTER DEATH OF MEMBER OR FORMER MEMBER.

[For text of subd 1, see M.S.1990]

Subd. 1a. Surviving spouse optional annuity. If a member or former member who has attained at least age 50 and has credit for not less than three years of allowable service or who has credit for not less than 30 years of allowable service, regardless of age attained, dies before the annuity or disability benefit begins to accrue in accordance with section 353.29, subdivision 7, or 353.33, subdivision 2, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive, instead of a refund with interest under subdivision 1, or surviving spouse benefits otherwise payable under section 353.31, an annuity equal to the 100 percent joint and survivor annuity that the member could have qualified for had the member terminated service on the date of death. The surviving spouse may apply for the annuity at any time after the date on which the deceased employee would have attained the required age for retirement based on the employee's allowable service. The annuity must be computed under sections 353.29, subdivisions 2 and 3; 353.30, subdivisions 1, 1a, 1b, 1c, and 5; and 353.31, subdivision 3. Sections 353.34, subdivision 3, and 353.71, subdivision 2, apply to a deferred annuity payable under this subdivision. No payment may accrue beyond the end of the month in which entitlement to the annuity has terminated. An amount equal to any excess of the accumulated contributions that were credited to the account of the deceased employee over and above the total of the annuities paid and payable to the surviving spouse must be paid to the deceased member's last designated beneficiary or, if none, to the legal representative of the estate of the deceased member. A member may specify in writing that this subdivision does not apply and that payment may be made only to the designated beneficiary as otherwise provided by this chapter.

[For text of subds 2 to 9, see M.S.1990]

History: 1991 c 341 s 18

353.33 TOTAL AND PERMANENT DISABILITY BENEFITS.

[For text of subs 1 to 3, see M.S.1990]

Subd. 3a. Optional annuity election. A disabled member may elect to receive the normal disability benefit or an optional annuity under section 353.30, subdivision 3. The election of an optional annuity must be made prior to the commencement of payment of the disability benefit. The optional annuity must begin to accrue on the same date as provided for the disability benefit.

(1) If a person who is not the spouse of a member is named as beneficiary of the joint and survivor optional annuity, the person is eligible to receive the annuity only if the spouse, on the disability application form prescribed by the executive director, permanently waives the surviving spouse benefits under sections 353.31, subdivision 1, and 353.32, subdivision 1a. If the spouse of the member refuses to permanently waive the surviving spouse coverage, the selection of a person other than the spouse of the member as a joint annuitant is invalid.

(2) If the spouse of the member permanently waives survivor coverage, the dependent children, if any, continue to be eligible for survivor benefits under section 353.31, subdivision 1, including the minimum benefit in section 353.31, subdivision 1a. The designated optional annuity beneficiary may draw the monthly benefit; however, the amount payable to the dependent child or children and joint annuitant must not exceed the 70 percent maximum family benefit under section 353.31, subdivision 1a. If the maximum is exceeded, the benefit of the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount.

(3) If the spouse is named as the beneficiary of the joint and survivor optional annuity, the spouse may draw the monthly benefits; however, the amount payable to the dependent child or children and the joint annuitant must not exceed the 70 percent maximum family benefit under section 353.31, subdivision 1a. If the maximum is exceeded, each dependent child will receive ten percent of the member's specified average monthly salary, and the benefit to the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount. The joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

[For text of subs 4 and 5, see M.S.1990]

Subd. 5a. [Repealed, 1991 c 341 s 51]

[For text of subs 5b to 11, see M.S.1990]

History: 1991 c 341 s 19

353.34 TERMINATION OF PUBLIC SERVICE.

Subdivision 1. Refund or deferred annuity. A member who ceases to be a public employee by reason of termination of public service, or who is on a continuous layoff for more than 120 calendar days, is entitled to a refund of accumulated employee deductions under subdivision 2, or to a deferred annuity under subdivision 3. An active member of a fund enumerated in section 356.30, subdivision 3, clause (7), (8), or (14), who terminates public service in any of those funds and becomes a member of another fund enumerated in those clauses may receive a refund of employee contributions plus six percent interest compounded annually from the fund in which the member terminated service. Application for a refund may not be made prior to the date of termination of public service or the expiration of 120 days of layoff. A refund must be paid within 120 days following receipt of the application unless the applicant has again become a public employee required to be covered by the association.

[For text of subds 2 to 7, see M.S.1990]

History: 1991 c 341 s 20

353.46 SAVINGS CLAUSES.

[For text of subds 1a and 2, see M.S.1990]

Subd. 4. Except as provided in section 353.84, the rights of a survivor of a former member, where such former member died prior to June 30, 1973, must be determined by the law in effect when such former member died even though a benefit is not payable until after June 30, 1973. If the survivor is also eligible to receive a retirement annuity from the association, the survivor is eligible to receive both benefits even upon remarriage.

[For text of subd 6, see M.S.1990]

History: 1991 c 341 s 21

353.64 MEMBERSHIP; QUALIFICATIONS; POLICE OFFICER, FIRE-FIGHTER.

[For text of subds 1 to 4, see M.S.1990]

Subd. 5a. A member of the police and fire fund continues to be a member of that fund if transferred to a different position with associated police or fire department functions in the same department or a related department in the same governmental subdivision provided the governing body sends a copy of a resolution to that effect to the association.

[For text of subds 7 to 9, see M.S.1990]

History: 1991 c 341 s 22

353.656 DISABILITY BENEFITS.

[For text of subd 1, see M.S.1990]

Subd. 1a. **Optional annuity election.** A disabled member of the police and fire fund may elect to receive the normal disability benefit or an optional annuity as provided in section 353.30, subdivision 3. The election of an optional annuity shall be made prior to commencement of payment of the disability benefit. The optional annuity shall begin to accrue on the same date as provided for the disability benefit.

(1) If the person who is not the spouse of the member is named as beneficiary of the joint and survivor optional annuity, the person is eligible to receive the annuity only if the spouse, on the disability application form prescribed by the executive director, permanently waives the surviving spouse benefits under section 353.657, subdivisions 2 and 2a. If the spouse of the member refuses to permanently waive the surviving spouse coverage, the selection of a person other than the spouse of the member as a joint annuitant is invalid.

(2) If the spouse of the member permanently waives survivor coverage, the dependent child or children, if any, continue to be eligible for survivor benefits, including the minimum benefit under section 353.657, subdivision 3. The designated optional annuity beneficiary may draw the monthly benefit; however, the amount payable to the dependent child or children and joint annuitant must not exceed the 70 percent maximum family benefit under section 353.657, subdivision 3. If the maximum is exceeded, the benefit of the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount.

(3) If the spouse is named as the beneficiary of the joint and survivor optional annuity, the spouse may draw the monthly benefit; however, the amount payable to the

dependent child or children and the joint annuitant must not exceed the 70 percent maximum family benefit under section 353.657, subdivision 3. If the maximum is exceeded, each dependent child will receive ten percent of the member's specified average monthly salary, and the benefit to the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount. The joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

[For text of subs 2 to 7, see M.S.1990]

History: 1991 c 341 s 23

353.657 SURVIVOR BENEFITS.

Subdivision 1. In the event any member of the police and fire fund dies from any cause before retirement or after becoming disabled and receiving disability benefits, the association shall grant survivor benefits to a surviving spouse, as defined in section 353.01, subdivision 20, and who was married to the member for a period of at least one year, except that if death occurs in the line of duty no time limit is required. The association shall also grant survivor benefits to a dependent child or children, as defined in section 353.01, subdivision 15. The spouse and child or children are entitled to monthly benefits as provided in the following subdivisions.

Subd. 2. The spouse, for life, shall receive a monthly benefit equal to 50 percent of the member's average full-time monthly salary rate as a police officer or firefighter in effect over the last six months of allowable service preceding the month in which death occurred.

Subd. 2a. **Death while eligible survivor benefit.** If a member or former member who has attained the age of at least 50 years and has credit for not less than three years allowable service or who has credit for at least 30 years of allowable service, regardless of age attained, dies before public service has terminated, or if an employee who has filed a valid application for an annuity or disability benefit prior to termination of public service dies before the annuity or benefit has become payable, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive a death while eligible survivor benefit. The benefit may be elected instead of a refund with interest under section 353.32, subdivision 1, or surviving spouse benefits otherwise payable under subdivisions 1 and 2. The benefit must be an annuity equal to the 100 percent joint and survivor annuity which the member could have qualified for on the date of death, computed as provided in sections 353.651, subdivisions 2 and 3, and 353.30, subdivision 3. If there is a dependent child or children, and the 100 percent joint and survivor optional annuity for the surviving spouse, when added to the benefit of the dependent child or children under subdivision 3, exceeds an amount equal to 70 percent of the member's specified average monthly salary, the 100 percent joint and survivor annuity must be reduced by the amount necessary so that the total family benefit does not exceed the 70 percent maximum family benefit amount under subdivision 3. The 100 percent joint and survivor optional annuity must be restored to the surviving spouse, plus applicable postretirement fund adjustments under section 356.41, as the dependent child or children become no longer dependent under section 353.01, subdivision 15. The surviving spouse may apply for the annuity at any time after the date on which the deceased employee would have attained the required age for retirement based on the employee's allowable service. Sections 353.34, subdivision 3, and 353.71, subdivision 2, apply to a deferred annuity payable under this subdivision. No payment shall accrue beyond the end of the month in which entitlement to such annuity has terminated. An amount equal to the excess, if any, of the accumulated contributions which were credited to the account of the deceased employee over and above the total of the annuities paid and payable to the surviving spouse shall be paid to the deceased member's last designated beneficiary or, if none, to the legal representative of the estate of

such deceased member. Any member may request in writing that this subdivision not apply and that payment be made only to the designated beneficiary, as otherwise provided by this chapter. For a member who is employed as a full-time firefighter by the department of military affairs of the state of Minnesota, allowable service as a full-time state military affairs department firefighter credited by the Minnesota state retirement system may be used in meeting the minimum allowable service requirement of this subdivision.

Subd. 3. A dependent child, as defined in section 353.01, subdivision 15, shall receive a monthly benefit equal to ten percent of the member's average full-time monthly salary rate as a police officer or firefighter in effect over the last six months of allowable service preceding the month in which death occurred. Payments for the benefit of a dependent child must be made to the surviving parent, or to the legal guardian of the child or to any adult person with whom the child may at the time be living, provided only that the parent or other person to whom any amount is to be paid advises the board in writing that the amount will be held or used in trust for the benefit of the child. The maximum monthly benefit for one family must not exceed an amount equal to 70 percent of the member's specified average monthly salary, and the minimum benefit per family, including the joint and survivor optional annuity under subdivision 2a, and section 353.656, subdivision 1a, must not be less than 50 percent of the member's specified average monthly salary.

Subd. 4. If the member shall die under circumstances which entitle a surviving spouse and dependent children to receive benefits under the workers' compensation law, the amounts so received by them shall not be deducted from the benefits payable under this section.

History: 1991 c 269 art 2 s 7; 1991 c 341 s 24